

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No. 04 of 2024
With

W.P. (C) No 05 of 2024

1. Mrs. Tulshi Chhetri,
W/o Upen Chhetri,
R/o Bishnu Niwas Building,
Below Ranipool Police Station,
Ranipool Bazaar, East Sikkim
727135.
2. Mr. Upen Chhetri,
(Husband of Tulshi Chhetri)
R/o Bishnu Niwas Building,
Below Ranipool Police Station,
Ranipool Bazaar, East Sikkim
727135.

..... Petitioners

Versus

Mrs. Deepa Chettri,
W/o Shri Bijay Sharma,
R/o Upper Sichey,
M.M. Rasaily Road, (Sichey Cooperative Road)
Near Sukha-Pool,
Reflection Beauty Parlour Building,
Gangtok, East Sikkim, 737101.

..... Respondent

Writ Petition under Article 227 of the Constitution of India.

*(Impugned Order dated 22.12.2023 passed by the learned Civil Judge
in Title Suit No. 33 of 2022 being Deepa Chettri vs. Tulshi Chettri &
Anr.)*

Appearance:

Mr. Karma Thinlay, Senior Advocate with Mr. Yashir
N. Tamang and Mr. Zamyag Norbu Bhutia, Advocates
for the Petitioners.

Mr. K. T. Tamang, Advocate for the Respondent.

W.P. (C) No. 04 of 2024
Mrs. Tulshi Chhetri & Anr. vs. Mrs. Deepa Chhetri
With
W.P. (C) No 05 of 2024
Mrs. Munna Chhetri @ Khima Devi Chhetri vs. Mrs. Deepa Chhetri

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Mrs. Munna Chhetri @ Khima Devi Chhetri,
D/o Late Man Bahadur Chhetri,
R/o Bishnu Niwas Building,
Below Ranipool, Police Station,
Ranipool Bazaar, East Sikkim, 727135.

..... Petitioner

Versus

Mrs. Deepa Chhetri,
W/o Shri Bijay Sharma,
R/o Upper Sichey,
M.M. Rasaily Road, (Sichey Cooperative Road)
Near Sukha-Pool,
Reflection Beauty Parlour Building,
Gangtok, East Sikkim, 737101.

..... Respondent

Appearance:

Mr. Karma Thinlay, Senior Advocate with Mr. Yashir N. Tamang and Mr. Zamyag Norbu Bhutia, Advocates for the Petitioners.

Mr. K. T. Tamang, Advocate for the Respondent.

Writ Petition under Article 227 of the Constitution of India.

(Impugned Order dated 22.12.2023 passed by the learned Civil Judge in Title Suit No. 34 of 2022 being Deepa Chhetri vs. Munna Chhetri).

Date of Hearing	:	05.04.2024
Date of Order	:	05.04.2024

ORDER (ORAL)

Bhaskar Raj Pradhan, J.

1. The two writ petitions challenging the impugned Orders both dated 22.12.2023 are taken up together for disposal as it

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raises identical issues in two civil suits i.e. Title Suit Case No. 33 of 2022 and Title Suit Case No. 34 of 2022 respectively. In both civil suits identical applications under Order 8 Rule 9 of the Code of Civil Procedure, 1908 (CPC) have been preferred by the petitioners (defendants in the civil suit) which were rejected by the learned Civil Judge, Senior Division, Gangtok (Civil Judge) disallowing them to file their counter claims.

2. It seems the suits were filed on 17.08.2022 by the respondent herein (plaintiff in the Civil Suit) seeking possession, declaration and injunction against the petitioners. On 02.11.2022 the petitioners filed their written statements. According to the petitioners thereafter, on 02.11.2023 a counter claims were served to the respondent by them but due to the absence of any application to place the counter claims on record the same were not brought on record. On 16.11.2023 the applications under Order 8 Rule 9 of the CPC were filed by the petitioners without the proposed counter claims which were heard on 30.11.2023 and rejected vide the impugned Orders dated 22.12.2023.

3. According to the learned Senior Counsel as well as the learned counsel appearing for the parties the issues have not been framed as yet.

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4. Order 8 Rule 9 of the CPC provides that no pleadings subsequent to the written statement of defendant other than by way of defense to set off or counter claim shall be presented except by the leave of the court and upon such terms as the court thinks fit but the court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than 30 days for presenting the same.

5. The learned Senior Counsel for the petitioners submits that the rejection of the applications seeking leave under Order 8 Rule 9 of the CPC is erroneous since the learned Trial Court did not even consider the counter claims as it were not on record. The learned counsel for the respondent fairly concedes to this point raised by the learned Senior Counsel for the petitioners.

6. Limitation may be a pure question of law but may also be a mixed question of fact as well as law. To examine whether it is a pure question of law or mixed question of law, consideration of the pleadings would be imperative. When therefore, the counter claim itself was not on record it may not have been proper on the part of the learned Trial Court to have outrightly rejected the application for leave on the ground of being barred by limitation. In such view of the matter, the impugned Orders both dated 22.12.2023 are set aside. The applications under Order 8 Rule 9 of the CPC are restored before the learned Trial

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Court in the respective civil suits. The petitioners are permitted to file their counter claims and when such counter claims are filed, the learned Trial Court may consider all the issues raised by the petitioners as well as the respondent and decide whether leave ought to be granted or not as per law. Pending interim applications are disposed of accordingly.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**

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